

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1168 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgment?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KIRITSINH GOPALSINH SARDAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.
MR MR PRAJAPATI for Petitioner No. 1
RULE SERVED for Respondent No. 1-2
Ms.Archana Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

It is a matter of regret that the point involved in this petition is regarding detention of the petitioner without trial by way of preventive detention. Still, the respondents have not even cared to file an affidavit-in-reply, controverting the averments made in the petition. This Court, in a number of cases, has said

that the averments made in such type of cases are required to be dealt with by filing appropriate reply. In spite of that, in several cases, this Court has noticed that the averments made in the petition are not controverted by filing any affidavit-in-reply and the matters are practically dealt with in a casual fashion. Ms. Archana Raval, learned AGP, submitted that, in view of the inadequacy of the staff, sometimes, the office of the Government Pleader finds it difficult to file appropriate reply. However, that may be an internal matter between the office of the Government Pleader and the Government. The fact remains that in most of the cases, affidavits-in-reply in detention cases are not filed, which reflects a very sorry state of affairs. It is hoped that, in future, appropriate replies may be filed so that the averments in petitions may not go uncontroverted.

So far as the facts of the present case are concerned, by an order dated 17.1.2004, the petitioner is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner. All the cases are under the Bombay Prohibition Act. After considering the aforesaid cases and after considering the statements of three witnesses, whose names have not been disclosed to the petitioner, the petitioner has been detained under PASA, which is under challenge in this petition.

The learned Advocate for the petitioner submitted that the petitioner made a representation against his detention order on 24th January, 2004, which was received by the Authority on 29th January, 2004, and, ultimately, the petitioner was informed by the authority that the said representation is rejected on 10th February, 2004. The petitioner was informed about the said fact on 17th February, 2004 as per the letter received by the petitioner from the Jail Authority. It is submitted that the delay in deciding the representation is not explained. The point of delay is taken in the petition at page 8 as Ground 4(k). In this connection, the learned Advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in *Mulshankar Kalyanbhai Jani v. State of Gujarat*, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside

the detention order. In paragraph 6, this Court has observed as under :-

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6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarding till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation.

... .."

Further, as pointed out earlier, unfortunately, the averments are not replied at all by filing affidavit-in-reply. In fact, none of the points raised in the petition is denied by the respondents by filing reply worth the name. Since the respondents have not explained the delay in deciding the representation by filing any reply nor is it pointed out when the representation was received and decided, only on the ground of uncontroverted averments in the petition about delay in deciding the representation, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

26th July, 2004 (P.B. Majmudar, J.)

(apj)